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February 6, 2012

VIA EFILE

Mr. Lester A. Heltzer Executive Secretary National Labor Relations Board 1099 14th Street NW Washington, DC 20570-0001

Re:

Community Options, N.Y., Inc.

Case No. 29-RD-066106

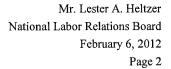
Dear Mr. Heltzer:

We are the attorneys for the Employer, Community Options, N.Y., Inc., in the above matter. We are in receipt of a letter addressed to you by counsel for the Intervener, District Council 1707, American Federation of State, County and Municipal Employees (AFSCME) ("D.C. 1707" or "the Union") dated February 1, 2012, in support of D.C. 1707's exceptions to the Acting Regional Director's Report on Objections and Notice of Hearing in this case, dated January 19, 2012.¹

The Union assigns as error the Acting Regional Director's decision to schedule a hearing on two objections (Nos. 2 and 3) the Employer timely raised to the Union's conduct affecting the results of a decertification election involving the parties on November 10, 2011.

D.C. 1707's argument is unavailing. The hearing was conducted, as scheduled, on January 30, 2012. D.C. 1707 fully participated in the hearing, was represented by counsel, called witnesses on its behalf, cross-examined other witnesses, introduced evidence, and made arguments on the record. D.C. 1707 made no objection to the hearing on the record. It is too late for the Union to contend now that the hearing should not have been conducted. If it truly believed that there was no cause for a hearing, it should have sought relief before the record

While the Union's letter recites that it is submitted "in support of exceptions" to the Acting Regional Director's Report, Community Options has received no exceptions filed on the Union's behalf.





opened, from the Board if not the Acting Regional Director.² Failing to do so, it has waived its right to complain now. The issue is moot.

In any event, D.C. 1707 has suffered no legal prejudice from having participated in the hearing. It was free during the hearing, and remains free in post-hearing briefs, to raise any arguments that may be appropriate in opposition to the Employer's objections. It cannot complain that the Hearing Officer and if necessary, the Board, will make a decision on the Employer's objections based upon an evidentiary record, instead of having the Acting Regional Director rely only on an administrative investigation.

Briefs to the Hearing Officer currently are due February 6, 2012. Her recommendations will follow in due course. The Board should thwart D.C. 1707's attempt to circumvent regular agency procedures. It also should refuse to entertain the Union's arguments on the merits of the Employer's objections. While Community Options disagrees with the Union's legal arguments, as they are unfounded, it will address its views on the merits of its objections, as prescribed, in its post-hearing brief to the Hearing Officer. Board consideration should await any exceptions to the Hearing Officer's Report on Objections, as directed by the Acting Regional Director.

D.C. 1707's arguments in support of its exceptions should be rejected.

Very truly yours,

JACKSON LEWIS LLF

Steven S. Goodman

SSG/eba/nml

This is so despite the February 2, 2012 date for exceptions recited in the Acting Regional Director's Report on Objections and Notice of Hearing.



CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of February, 2012, I caused a true and correct copy of BRIEF OPPOSING EXCEPTIONS to be served upon all interested parties, via email and efiling to the Acting Regional Director, addressed to:

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Dated: Melville, New York February 6, 2012